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EXAMINER	
YUEN, KAN	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/723,118	ORAN ET AL.	
	Examiner	Art Unit	
	KAN YUEN	2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10/27/2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Response to Arguments

1. Applicant's arguments, see remark on page 1, filed 10/27/2008, with respect to the rejection(s) of claim(s) 1-20 under 103 (a) rejections have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Best et al. (Pat 6118796).

Finality Note

2. The finality of the rejection made in the Office Action mailed on 08/26/2008 is withdrawn in order to apply a new ground of rejection.

3. Examiner now, reconsidered the amendment filed before the Final Office Action (mailed on 08/26/2008), which is the Amendment after Non-Final Rejection filed on 06/05/2008.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 11 and 18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. In claim 1, lines 9-10, the claim recites: "the no-op media payload packets formatted as thought he media packets contain media payload but that do not contain media payloads;", which is considered vague. Applicant did not clearly define whether

the no-op media payload packet is formatted with media payload or without payload.

Similar problem exists in claims 11 and 18.

Claim Rejections - 35 USC § 103

7. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1, 2, 10-12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss et al. (Pat No.: 6741600), in view of Best et al. (Pat 6118796).

For claim 1, Weiss et al. disclosed the method of conducting an initial media call session for establishing a media call and setting up the media path over the packet switch network (ATM network), the media path established by successful completion of the initial media call signaling set up session and used for receiving or transmitting media packets containing media payloads (Weiss et al. column 1, lines 5-30, column 3,

lines 18-30). To establish the virtual circuits and virtual paths, network nodes that are to be included therein exchange a series of call setup and ACK messages;

sending and/or receiving one or more no-op media payload packets over the media path during and within the initial media call signaling session prior to establishing the media call and setting up the media path (column 1, lines 5-30, column 3, lines 18-30). The hub node 12 receives a conventional call setup (no-op) message;

requesting or receiving media path quality information associated with the no-op media payload packets during the initial media call signaling session prior to establishment of the media call being established by the initial media call signaling session (column 1, lines 5-30, column 3, lines 18-30). The call setup message includes the connection requirement information such as the quality of service or bandwidth (path quality information); and

selectively completing or terminating the initial media call signaling session according to the information obtained from the transmission of the no-op media payload packet during the initial media call signaling session, successful completion of the initial media call signaling session enabling subsequent transmission or playing out of media packets containing media payloads over the media path (column 3, lines 18-50). If sufficient bandwidth is available, the hub node 12 sends an Ack message back to the previous node and forwards the call setup message to the destination node. If insufficient bandwidth is detected, the hub node 12 will reject the call establishment.

However, Weiss et al. did not disclose the feature wherein the no-op media payload packets formatted as though the media packets contain media payloads but that do not contain media payloads.

Best et al. from the same or similar fields of endeavor teaches the no-op media (call setup dummy message) payload packets formatted as though the media packets contain media payloads but that do not contain media payloads (Best et al. column 24, lines 1-25, see claim 13, fig. 8C, block 890). This latter block sends a so-called "dummy" setup message to provoke a benign response from this particular switch. In addition, as recited in claim 13 of the reference, a dummy message is a call setup message. Therefore, based on broadest reasonable interpretation, the media packet formatted as though the media packets contain media payloads but that do not contain media payloads can be interpreted as the call setup dummy message.

Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the call setup dummy message as taught by Best et al. to replace the call setup message as taught by Weiss et al. The motivation for using the teaching of Best et al. in the network of Weiss et al. being that it simplifies and facilitates installation and provide economical use in circuit and packet switching environment by providing an automated different switch adapters detection.

Regarding claim 2, Weiss et al. disclosed the feature of formatting the no-op media payload packets as a Real Time Protocol (RTP) media payload packet that is formatted as though it contains media content but that contains no media content and sending the no-op media payload packets during a Session Initiation Protocol (SIP)

media call signaling session (Weiss et al. column 1, lines 5-30, column 3, lines 18-30). To establish the virtual circuits and virtual paths, network nodes that are to be included therein exchange a series of call setup and ACK messages.

Regarding claim 10, Weiss et al. disclosed the feature of including notifying a user of a media call according to the information associated with the transmission of the no-op media payload packets (Weiss et al. column 3, lines 18-50). If sufficient bandwidth is available, the hub node 12 sends an Ack message back to the previous node and forwards the call setup message to the destination node. If insufficient bandwidth is detected, the hub node 12 will reject the call establishment.

Claim 11 is rejected similar to claim 1.

Regarding claim 12, Weiss et al. disclosed the processor is configured to send and/or receive the one or more packets during and within a media call signaling session, the media call signaling session establishing and setting up the media path that is then subsequently used for sending or receiving the media stream (Weiss et al. column 3, lines 18-65). If sufficient bandwidth is available, the hub node 12 sends an Ack message back to the previous node and forwards the call setup message to the destination node. If insufficient bandwidth is detected, the hub node 12 will reject the call establishment.

Regarding claim 14, Weiss et al. disclosed the feature of wherein processing device including a user interface configured to communicate with a device that initiates an IP network connection for transmitting the media stream (Weiss et al. column 3, lines

18-65). Each node 12 has an input (user interface) that receive call setup message for connection establishment.

10. Claims 3, 4, 13, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss et al. (Pat No.: 6741600), in view of Best et al. (Pat 6118796), as applied to claim 1 above, and further in view of FitzGerald et al. (Pat No.: 7310334).

For claim 3, Weiss et al. and Best et al. both did not teach generating a media path analysis report from the information generated from the transmitted no-op media payload packets. FitzGerald et al. from the same or similar fields of endeavor disclosed the feature of generating a media path analysis report from the information generated from the transmitted no-op media payload packets (FitzGerald et al. column 2, lines 10-45, fig. 1). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the teaching of FitzGerald et al. in the network of Weiss et al. and Best et al.. The motivation for using the teaching of FitzGerald et al. in the network of Weiss et al. and Best et al. being that it provides more reliable transmission by constantly sending reports back for transmission analysis. Thus the report can substantially increase system utilization.

Regarding claim 4, FitzGerald et al. disclosed the media path analysis report is a Real Time Control Protocol (RTCP) report (FitzGerald et al. column 2, lines 10-45, fig. 1).

Regarding claim 13, FitzGerald et al. disclosed the processor is configured to generate a Real Time Control Protocol (RTCP) report using the transmission information associated with the packets (FitzGerald et al. column 2, lines 10-45, fig. 1).

Regarding claim 17, FitzGerald et al. disclosed the feature wherein the processor is configured to send or receive the media stream according to the number of successfully transmitted packets and the jitter statistics for the packets (FitzGerald et al. column 2, lines 45-60, fig. 1). The types of information about the media path includes number of packets transmitted and jitter information.

11. Claims 5-9, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss et al. (Pat No.: 6741600), in view of Best et al. (Pat 6118796), and FitzGerald et al. (Pat No.: 7310334), as applied to claim 3 above, and further in view of Teruhi et al. (Pub No.: 2003/0072269).

For claim 5, Weiss et al. Best et al. and FitzGerald et al. all did not teach setting a marker bit in the no-op media payload packets to initiate a receiver to immediately send back the media path analysis report. Teruhi et al. from the same or similar fields of endeavor disclosed the feature of setting a marker bit in the no-op media payload packets to initiate a receiver to immediately send back the media path analysis report (Teruhi et al. fig. 3, paragraph 0045). In fig 3, The RTP header has a marker bit M field. Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the teaching of Teruhi et al. in the network of Weiss et al., Best et

al. and FitzGerald et al. The motivation for using the teaching of Teruhi et al. in the network of Weiss et al., Best et al. and FitzGerald et al. being that it provides more reliable transmission.

Regarding claim 6, Weiss et al. disclosed the feature of determining whether or not to transmit a media stream over the media path according to when or if the media path analysis report is received after transmitting the no-op media payload packets with the set marker bit (Weiss et al. column 3, lines 18-50). If sufficient bandwidth is available, the hub node 12 sends an Ack message back to the previous node and forwards the call setup message to the destination node. If insufficient bandwidth is detected, the hub node 12 will reject the call establishment.

Regarding claim 7, Teruhi et al. disclosed the feature of generating the media path analysis report without playing out contents of the no-op media payload packets (Teruhi et al. paragraph 0062-0066). The source sends the sender report RTCP-SR at fixed time intervals.

Regarding claim 8, Teruhi et al. disclosed the feature of receiving multiple no-op media payload packets during the same media call signaling session; and generating the media path analysis report according to transmission information for all of the multiple no-op media payload packets (Teruhi et al. paragraph 0062-0066). The source sends the sender RTP packets over respective routes at the determined distribution.

Regarding claim 9, Teruhi et al. disclosed the feature of inserting a time stamp into the transmitted no-op media payload packets that identifies a non-zero amount of simulated media time for media content in the no-op media payload packets that is not

actually encoded into the no-op media payload packets (Teruhi et al. fig. 3, paragraph 0045). In fig 3, The RTP header has timestamp field 62.

Regarding claim 15, Teruhi et al. disclosed wherein the processor is configured to conduct a signaling session that notifies a receiver that the packets are going to be used for analyzing the IP network (Teruhi et al. fig. 10, paragraph 0062-0066).

12. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weiss et al. (Pat No.: 6741600), in view of Best et al. (Pat 6118796) and Teruhi et al. (Pub No.: 2003/0072269), as applied to claim 16 above, and further in view of Kressin (Pub No.: 2003/0220971).

For claim 16, Weis et al. Best et al. and Teruhi et al. all did not disclose the feature wherein the processor is configured to generate a marker bit in one of the packets that causes the receiver to send back the transmission information associated with the packets. Kressin from the same or similar fields of endeavor teaches the processor is configured to generate a marker bit in one of the packets that causes the receiver to send back the transmission information associated with the packets (Kressin paragraph 0076). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the teaching of Kressin in the network of Weiss et al., Best et al. and Teruhi et al. The motivation for using the teaching of Kressin in the

network of Weiss et al., Best et al. and Teruhi et al. being that it provides more reliable transmission.

13. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over FitzGerald et al. (Pat No.: 7310334), in view of Best et al. (Pat 6118796) and further in view of Teruhi et al. (Pub No.: 2003/0072269).

For claim 18, FitzGerald et al. disclosed the method of initiating a Real Time Protocol (RTP) signaling session for establishing a media path for transporting RTP payload packets that contain media payloads (FitzGerald et al. column 2, lines 10-25, fig. 1). The signaling 24 is conducted through a signaling network 26 to establish the RTP path 20, wherein the signaling protocols can be SIP, ITU, H.323, MGCP, etc; (column 2, lines 10-45, fig. 1). The signaling 24 causes the media endpoints 14 and 16 to send reports 22 RTCP to each other and to also send reports 25 to observers 18A, wherein the RTCP report contains quality information about media path 20. The type of information about RTP media path 20 contained in the report 25 can include: number of packets transmitted, number of lost packets, and timestamp, etc.

However, FitzGerald et al. did not disclose sending multiple RTP payload packets during and within the RTP signaling session that are formatted as if the RTP payload packets contain a media payload but that do not contain any media payload; and setting a market bit in one of the RTP payload packets that causes a receiver to

send back a Real Time Control Protocol (RTCP) report that contains media path information for the send RTP payload packets.

Best et al. from the same or similar fields of endeavor teaches the no-op media (call setup dummy message) payload packets formatted as though the media packets contain media payloads but that do not contain media payloads (Best et al. column 24, lines 1-25, see claim 13, fig. 8C, block 890). This latter block sends a so-called "dummy" setup message to provoke a benign response from this particular switch, wherein call setup message is the dummy message. Based on broadest reasonable interpretation, the media packet formatted as though the media packets contain media payloads but that do not contain media payloads can be interpreted as the call setup dummy message.

Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the call setup inquiry message as taught by Best et al. to replace the call setup message as taught by Weiss et al. The motivation for using the teaching of Best et al. in the network of Weiss et al. being that it simplifies and facilitates installation and provide economical use in circuit and packet switching environment by providing an automated different switch adapters detection.

Teruhi et al. from the same or similar fields of endeavor disclosed the feature of setting a market bit in one of the RTP payload packets that causes a receiver to send back a Real Time Control Protocol (RTCP) report that contains media path information for the send RTP payload packets (Teruhi et al. fig. 3, paragraph 0045). In fig 3, The RTP header has a marker bit M field. Thus, it would have been obvious to the person of

ordinary skill in the art at the time of the invention to use the teaching of Teruhi et al. in the network of FitzGerald et al. and Best et al.. The motivation for using the teaching of Teruhi et al. in the network of FitzGerald et al. and Best et al., being that it provides more reliable transmission.

Regarding claim 19, FitzGerald et al. disclosed the feature of receiving multiple RTP payload packets that contain no media payload;, generating an RTCP report that that includes media path information for the received RTP payload packets; sending the RTCP report when one of the RTP payload packets is received that has a set marker bit; and establishing a media stream according to the media path information in the RTCP report (FitzGerald et al. column 2, lines 10-67, fig. 1).

14. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over FitzGerald et al. (Pat No.: 7310334), in view of Best et al. (Pat 6118796) and Teruhi et al. (Pub No.: 2003/0072269), as applied to claim 19 above, and further in view of Chu et al. (Pub No.: 2007/0286165).

For claim 20, FitzGerald et al., Best et al. and Teruhi et al. all did not disclose delaying ringing a phone used for receiving the media stream until the RTCP report is received and indicates an acceptable media path for sending the media stream. Chu et al. from the same or similar fields of endeavor disclosed delaying ringing a phone used for receiving the media stream until the RTCP report is received and indicates an acceptable media path for sending the media stream (Chu paragraphs 0036-0038, fig.

4). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the teaching of Chu et al. in the network of FitzGerald et al. Best et al., and Teruhi et al. The motivation for using the teaching of Chu et al. in the network of FitzGerald et al. Best et al., and Teruhi et al. being that it provides more reliable transmission.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAN YUEN whose telephone number is (571)270-1413. The examiner can normally be reached on Monday-Friday 10:00a.m-3:00p.m EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky O. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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